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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-707

THE SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA, *et al.*,
Petitioners,

vs.

CHARLES L. MEDLEY, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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Opinions Below

The August 3, 1973 opinion of the Court of Appeals for the Fourth Circuit, and the concurring and dissenting opinion of Judge Winter, are now reported at 482 F.2d 1061.

Question Presented

Did the Court of Appeals or the district court err in requiring Danville to devise and implement an effective pupil desegregation plan including reassignment of elementary school students across the Dan River, with transportation as necessary, since the geographic zoning plan adopted by the school district in 1970 had left many schools in this small system with racial compositions which were substantially disproportionate to that of the entire district?

Reasons Why the Writ Should Be Denied

This is a startlingly simple case. It involves a small school district divided by the Dan River and a federal district court, both of which (despite this Court's decisions in *Swann*[1] and *Davis*[2]) sought to characterize demands for effective school desegregation as efforts to achieve "racial balance," and to make the river an impassable barrier to constitutional elementary school integration. The United States Court of Appeals for the Fourth Circuit, which in the past has been sharply divided on many school desegregation issues,[3] was unanimous in this case[4] in requiring that Danville at long last complete the process of desegregating its schools.

The Danville School Board's attempt to create serious constitutional issues where there are none must fail. This case involves a historically dual system, like Charlotte, and the issue presented to both the district court and the Court of Appeals was: has Danville taken effective measures to eliminate its former mandated segregation and the effects thereof? *Cf. Green* v. *County School Bd. of New Kent County,* 391 U.S. 430 (1968). The district court agreed that, when the case first came before it in 1971, schools of substantially disproportionate racial composition (when compared to the system-wide distribution of black and

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[1] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.,* 402 U.S. 1 (1971).

[2] *Davis* v. *Board of School Comm'rs of Mobile,* 402 U.S. 33 (1971).

[3] See, *e.g., Swann* v. *Charlotte-Mecklenburg Bd. of Educ.,* 431 F.2d 138 (1970), *rev'd in part,* 402 U.S. 1 (1971); *Council of the City of Emporia* v. *Wright,* 442 F.2d 570, 588 (1971), *rev'd* 407 U.S. 451 (1972).

[4] The partial dissenting opinion of Judge Winter did not concern the issue of student assignment.

white students) remained despite the availability of remedial measures to eliminate them. The district court accordingly required creation of 5-6 grade centers on either side of the Dan River.

However, the district court stopped short of completely eliminating disproportionate schools by assigning elementary students across the Dan River (despite the fact that some schools of differing racial composition on either side of the river were closer to each other than to other facilities on the same shore [Ptn. App. 59a]). That court noted the crowded bridges, some without sidewalks, and determined it could not subject elementary children to these "hazards." In reversing, the Court of Appeals considered the distances involved [Ptn. App. 59a] and concluded that highway hazards could be minimized by providing pupil transportation [*id.* at 60a]; in any event, the Court held, there were not "specific findings which demonstrate that no other plan affording greater integration is practicable" [*id.* at 59a, citing *Thompson* v. *School Bd. of Newport News*, 465 F.2d 83 (4th Cir. 1972), *cert. denied*, 413 U.S. 920 (1973)], and the case was remanded for further proceedings.

The Court of Appeals' decision is eminently sound. The Board's claim that review here is merited can be made only by totally ignoring this Court's language in *Swann*:

> The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools. No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a

> **school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.**

402 U.S., at 26. That is precisely the gravamen of the Court of Appeals' decision.

It is true that the decision below conflicts with the approach of the Sixth Circuit in *Goss* v. *Board of Educ. of Knoxville*, 482 F.2d 1044 (1973). The conflict was noted by petitioners Goss, et al. (represented by some of the same counsel who represent the respondents in *Danville*) in their Petition for Writ of Certiorari (No. 73-661), presently pending before this Court. As noted therein, the Sixth Circuit (like the district court in *Danville*) seems to place little weight upon the language of this Court in *Swann*, quoted above. Its approval of continuing substantial segregation in Knoxville because the district court thought the plaintiffs wanted racial balance, or because of presumed impracticalities, cannot be squared with this Court's controlling decisions. While the disparate approaches of the two Circuits constitutes a situation ripe for correction by this Court's *certiorari* jurisdiction, we submit that the facts and dispositions of the two cases compel the conclusion that the Sixth Circuit's decision is the erroneous one. Full and appropriate relief as well as clarification of the law can be satisfactorily achieved by reviewing *Goss* and denying the writ in this *Danville* case.

CONCLUSION

WHEREFORE, for the foregoing reasons, respondents respectfully pray that the Writ be denied.

Respectfully submitted,

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